

**Nursing and Midwifery Council
Fitness to Practise Committee**

Substantive Hearing
Thursday, 18 March 2021 – Friday, 19 March 2021
&
Monday, 10 May 2021
&
Monday, 13 September 2021 – Wednesday, 15 September 2021
&
Monday, 15 November 2021 – Tuesday, 16 November 2021

Virtual Hearing

Name of registrant: Margareta Nela Mircea

NMC PIN: 16C0403C

Part(s) of the register: Registered Nurse – Sub-part 1
Adult Nursing – March 2016

Area of registered address: England

Type of case: Conviction

Panel members: Trevor Spires (Chair, Lay member)
Mark Gibson (Registrant member)
Peter Wrench (Lay member)

Legal Assessor: Angus Macpherson (Days 1 – 3)
Jeremy Barnett (Days 4 – 6)
John Bromley-Davenport (Days 7 – 8)

Panel Secretary: Philip Austin (Days 1 – 3) & (Days 7 – 8)
Teige Gardner (Days 4 – 6)

Nursing and Midwifery Council: Represented by Ruth Alabaster, Case Presenter

Mrs Mircea: Present with an interpreter, but not represented

Interpreter: Alice Grigoras (Days 1 – 2)
Alina Botezatu (Day 3)
Paula Andrei (Days 4 – 6)
Viviana Radulescu (Days 7 – 8)

of Bostico International

Facts proved by admission:

Charge 1

Fitness to practise:

Currently Impaired

Sanction:

Caution order (3 years)

Interim order:

No interim order

Decision and reasons on application for hearing to be held in private

Ms Alabaster made a request that parts of the hearing be held in private on the basis that proper exploration of this case may involve reference to your health. She submitted that any public interest in these parts of the case being aired in public session is outweighed by the need to protect your privacy in this respect. This application was made pursuant to Rule 19 of the NMC (Fitness to Practise) Rules 2004, as amended (“the Rules”).

You agreed with the application.

The legal assessor reminded the panel that while Rule 19 (1) provides, as a starting point, that hearings shall be conducted in public, Rule 19 (3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Rule 19 states:

19.—(1) Subject to paragraphs (2) and (3) below, hearings shall be conducted in public.

(2) Subject to paragraph (2A), a hearing before the Fitness to Practise Committee which relates solely to an allegation concerning the registrant’s physical or mental health must be conducted in private.

(2A) All or part of the hearing referred to in paragraph (2) may be held in public where the Fitness to Practise Committee—

- (a) having given the parties, and any third party whom the Committee considers it appropriate to hear, an opportunity to make representations; and
- (b) having obtained the advice of the legal assessor, is satisfied that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant.

- (3) Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied—
- (a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and
 - (b) having obtained the advice of the legal assessor, that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.
- (4) In this rule, “in private” means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.

Having heard that there may be reference to your health, the panel determined to hold such parts of the hearing in private. The panel determined to rule on whether or not to go into private session in connection with these matters as and when such issues are raised.

Preliminary matters

Before the charges were read, three matters of concern were raised by the panel, having read the papers in this case as follows:

1. Whether there is an equivalent offence in the UK in respect of the offence in respect of which you were allegedly convicted in Romania, namely bribe giving contrary to article 255(1) of the Criminal Code 1969 pursuant to article 5(1) of the Criminal Code. This issue will determine whether the case has been properly brought against you under Article 22(1)(a)(iii) of the Nursing and Midwifery Order 2001. The reason why the panel has raised this point is that there is no document in the papers establishing what article 255(1) of the Criminal Code provides. It did not therefore seem possible for the panel to understand that the alleged conviction

in Romania for the offence of bribe giving would constitute an offence if committed in England and Wales.

2. How the conviction could be proved in the absence of a certificate of conviction.
3. Whether the outcome of your criminal trial in Romania has impacted upon your entitlement to NMC registration, in view of the fact that the Judge in Romania allegedly ordered that “*the final examination at the...Post Secondary College of Nursing, August 2013 session, shall be partially invalidated in respect of the defendant...*”

The panel asked the NMC to provide further information in respect of those points:

After taking instructions on these matters, Ms Alabaster submitted that the absence of a certificate of conviction does not fundamentally impact these proceedings. She submitted that whilst a certificate of conviction can be relied upon as conclusive proof of a conviction in the UK, there is no comparable provision in the Rules in relation to convictions overseas – and in any event, no such certificate had been provided by the criminal courts in Romania, where this offence was committed. Ms Alabaster submitted that the NMC would invite the panel to consider the evidence before it in determining whether you have received a conviction. She accepted that the Judge’s sentencing remarks at Bucharest City Court did not constitute conclusive proof of the conviction, but the panel is entitled to take this into account, along with your and your former representative’s acceptance that you have received a criminal conviction, as well as the evidence which shows that your appeal to have the conviction overturned was dismissed.

Ms Alabaster submitted that it would not have been the intention of the UK Parliament in passing the Nursing and Midwifery Order 2001 that, the legal definition of offences which resulted in convictions overseas, needed to be identical to the formulation of comparable offences in England and Wales, in order for the resulting overseas convictions to be actionable in regulatory proceedings here. She submitted that the law in this respect could not have been intended to be that narrow. Ms Alabaster submitted that, in the NMC’s view, the facts that underpin your conviction in Romania could properly be seen as the

equivalent of an offence in England and Wales, namely under Section 1 of the Bribery Act 2010, as the evidence suggests that you gave money to another person to induce them to perform a function improperly.

Ms Alabaster also submitted that any registration concerns about your eligibility to be on the NMC Register are dealt with outside of the Fitness to Practise process. She submitted that a separate committee has the function of considering these matters, and that no such matter is before this panel today. Ms Alabaster submitted that the information suggests that you received a serious criminal conviction at a point when you were already on the NMC Register. Therefore, she submitted that this matter is rightly before this panel of the Fitness to Practise Committee.

You told the panel that you did not have anything to raise at this point.

The panel heard and accepted the advice of the legal assessor.

The panel had regard to the submissions of Ms Alabaster in deciding how best to proceed with this hearing. It accepted that some of the matters raised could be dealt with by the panel as the hearing progresses, namely the fact of your conviction and the findings of fact upon which that conviction was based. Further, it noted the NMC's position in respect of your registration with the NMC.

However, the panel remains concerned about proceeding with the case in the absence of evidence concerning the Criminal Code in Romania. In particular it was concerned about permitting the allegation to be put to you when it was not clear that the conviction in Romania represented a conviction for an offence, which if committed in England and Wales, would constitute a criminal offence. In the absence of that material, it considered that it would not be fair for the charge to be put to you. In the panel's view, on the available evidence, you could fairly be invited to admit that you have been convicted by a court in Romania – but not that the conviction was for an offence that would constitute an offence if committed in England and Wales. The panel noted that you are not legally represented.

The panel did have regard to the overarching objective of the NMC. It therefore considered that it was appropriate to give the NMC more time to research the Criminal Code in Romania or, alternatively to consider whether it would be appropriate to formulate charges against you in some other way based on the matters which were allegedly found proved in Romania in 2017.

The panel decided that this issue is a matter which should be dealt with at the outset of the proceedings, that is before the charge is put to you.

Interim Order

Ms Alabaster submitted that as this matter is being adjourned, the panel must consider whether it is necessary to impose an interim order on the grounds of public protection, public interest, or in your own interest. She submitted that the NMC are not making a positive application for the panel to impose an interim order in this case, but it is right that the panel considers this.

You told the panel that you do not think an interim order is necessary.

The panel heard and accepted the advice of the legal assessor.

The panel determined that it was not necessary to impose an interim order in this case. Nothing that has arisen in this case suggests that there are any immediate public protection or public interest concerns. It noted that there was not an interim order in place previously, and it was satisfied that the risk identified has not changed.

Application to adjourn

At the resuming hearing on 10 May 2021, Ms Alabaster, on behalf of the NMC, invited the panel to adjourn this hearing.

Ms Alabaster submitted that during the intervening period, the NMC has tried to source information around the equivalency of the English and Romanian legislation. However, she submitted that what the NMC has obtained has not provided sufficient clarification, so the panel's concerns around fairness to you have not been allayed since the last hearing. She reminded the panel that it was not satisfied, on the evidence before it, that the conviction in Romanian law would constitute a criminal offence in English law, so it decided it would not be fair to have this charge put to you.

Ms Alabaster informed the panel that after receiving the panel's previous decision, the case holding lawyer instructed research to be carried out and, as such, a version of the Romanian Penal Code was sourced. Nonetheless, the NMC is concerned that the material it is in possession of cannot be relied upon as the version of the Romanian Penal Code that was applied when you were convicted. Therefore, in having regard to Rule 31 which requires all documents to be relevant and fair, she submitted that this information is arguably not relevant and is not something that will assist the panel evidentially.

Ms Alabaster submitted that the NMC have learnt from attempting to source the information that reliably locating the Romanian legislation setting out the relevant offence is complex. She informed the panel that a number of documents have been obtained, but the NMC is of the view that the relevant legislation has not yet been obtained. Ms Alabaster submitted that having noted that the panel determined that it is not fair to proceed without this issue being resolved, it is not appropriate to proceed at this stage, hence this application to adjourn the hearing.

Ms Alabaster submitted that if the application to adjourn is granted, the NMC will seek an expert opinion from a lawyer who is qualified in both English and Romanian law, in order

to provide the correct information to the panel. She submitted that this expert will be independent of the NMC and will be able to identify and provide the Romanian legislation under which you were convicted. Furthermore, Ms Alabaster submitted that the expert will potentially be able to provide a legal opinion in respect of equivalency for the offence in English law. She submitted that in taking account of the panel's clear indication, the NMC consider this to be a necessary step to take in resolving this matter.

Ms Alabaster referred the panel to Rule 32(2) and Rule 32(4) in making this application. She submitted that there are four main factors for the panel to have regard to in considering an application to adjourn:

1. Whether there is any injustice caused to either party.
2. Whether it is in the public interest, in the expeditious disposal of this case.
3. Whether there is any potential inconvenience to witnesses of either party.
4. Whether it would be fair to you in the circumstances.

Ms Alabaster submitted that an adjournment can be made with no injustice caused to any party, which includes both you and the NMC. However, she submitted that there is potential injustice caused if this application to adjourn the hearing is not granted. Ms Alabaster submitted that, in having accepted the panel's concerns, and having found a proposed solution for dealing with these concerns in an independent and fair way, there is a risk that matters will not be properly determined by the panel if an adjournment was not permitted.

Ms Alabaster referred the panel to the case of *NMC v PSA & Jozi [2015] EWHC 764 (Admin)* and submitted that the principles which come from this reinforce the fact that Fitness to Practise ("FtP") panels have a duty to ensure that the full seriousness of the case is properly before them, and then make a decision as to how to properly deal with it. She submitted that this is supported by the case of *Council for the Regulation of Health Care Professionals v General Medical Council and Ruscillo, [2004] EWCA Civ 1356*, and

said that the NMC's case should not fail on a technicality when the NMC are offering a potential solution to the panel.

Ms Alabaster submitted that the NMC's potential enquiries could result in an expert opinion providing information that could be favourable to you, therefore, scoping out this possibility makes the position more just.

Ms Alabaster submitted that any further delay should be minimised as much as possible. She submitted that delays should always be weighed against the public interest in having this matter resolved at the earliest opportunity, in accordance with the NMC's overarching objective of public protection.

Ms Alabaster submitted that there are no live witnesses to this case, other than yourself, should you choose to give evidence to the panel. She submitted that your level of reliability is not likely to be hindered by the passage of time, in contrast to seeking a new witness as to the facts of this case.

In taking account of the above, Ms Alabaster invited the panel to adjourn for a minimum of eight weeks.

Ms Alabaster apologised to you that it will take longer to resolve your case, if the panel are minded to grant the application. She reminded the panel that further delays may have a potential adverse effect on you as you will have to wait longer for a final outcome, but you are not restricted in your nursing practice in the meantime.

You told the panel that you do not agree to an adjournment of this case.

You submitted that the NMC have had sufficient time to bring the evidence it intends to rely on.

You told the panel that you have already been tried for this matter in a Romanian court, so you do not know why you are being charged with the same concerns at this hearing.

You reminded the panel that you have been a registered nurse since 2013, and your job has never been affected by these proceedings.

You stated that you have been punished once for what you have done and you have respected this decision. You do not believe that it is fair or just to be tried again in an English court.

The panel heard and accepted the advice of the legal assessor.

In considering this application, the panel noted that you have been living with this incident for approximately eight years, and that the NMC has been aware of the concerns against you since July 2017.

The panel noted that prior to adjourning the hearing on the last occasion, it had determined that it would not be fair to allow the charge to be put to you until such time as the panel are satisfied that the NMC had adduced evidence to show that the offence you were convicted of under Romanian law would constitute an offence under English law.

In having regard to the above, the panel noted the NMC's proposed plan to address the situation. The panel received little explanation as to what steps the NMC had taken in the intervening period, but accepted the explanation that the relevant evidence has not yet been obtained. It noted that the version of the Romanian Penal Code before it appeared apposite in some areas, but not others.

The panel was aware that the conviction you received in the Romanian Court relates to the offence of bribery, and this was in relation to you obtaining a nursing qualification. Therefore, the panel considered these concerns to be fundamental to its duty in

determining whether there is a fitness to practise concern involving your eligibility to practise as a registered nurse in the UK.

The panel noted that there may be some confusion on your part, as you are not being prosecuted twice for the same offence. The NMC's purpose for bringing this case is for consideration to be given to whether the conviction you received in Romania affects your fitness to practise as a registered nurse in the UK. It noted that at the current time, it is not clear exactly what impact, if any, your conviction had on your qualifications and your ability to practice in Romania.

Specifically, as to the factors referred to by Ms Alabaster in considering whether an adjournment should be granted, the panel was of the view that there could be potential injustice caused to the NMC in not granting an adjournment. The panel noted that it had raised these concerns on the previous occasion, and that it had decided to adjourn for these issues to be looked into. It accepted that it may take some time for the NMC to instruct a legal expert who is dual-qualified in both Romanian and English law, who is able to consider the matter and give their legal opinion. The panel therefore decided that it would be reasonable to allow the NMC further time to make these enquiries. It was satisfied that it would be unjust not to allow the NMC further time to adduce the evidence which may speak to the regulatory concerns identified.

In deciding to grant the adjournment, the panel noted that it was not given prior notice that the NMC would not be in a position to bring the case against you today. It was concerned that this matter has lasted for a significant period of time, and noted that you have attended today with the intention of proceeding with this matter, as you did on the last occasion. The panel has given very careful consideration to the question of whether a further adjournment would be fair to you. However, narrowly, on balance, the panel determined to permit the NMC time to instruct a legal expert in this matter. It noted that this expert would be independent of the NMC, and that there is a possibility that evidence could be provided which is favourable to you.

Therefore, the panel decided to adjourn this matter for approximately eight weeks. It did not consider this period of time to be unfair in the particular circumstances of this case, but wished to indicate the importance of this matter being reconvened and concluded as quickly as possible.

Interim Order

Ms Alabaster submitted that as this matter is being adjourned again, the panel must consider whether it is necessary to impose an interim order on the grounds of public protection, public interest, or in your own interest. She submitted that the NMC are not making a positive application for the panel to impose an interim order in this case.

You did not make any further submissions.

The panel heard and accepted the advice of the legal assessor.

The panel determined that it was not necessary to impose an interim order in this case. It noted that no progress had been made since adjourning the hearing on 19 March 2021 and, as such, the potential risk has not changed. Nothing that has arisen in this case suggests that there are any immediate public protection or public interest concerns. It noted that there was not an interim order in place previously.

Decision and reasons on application to amend the charge

When the hearing resumed on Monday, 13 September 2021, Ms Alabaster presented a statement from an expert on Romanian and English and Welsh law which confirmed that the offence for which you were convicted in Romania also constituted an offence of bribery in England and Wales. The panel accepted this independent legal opinion. However, it did note that the Romanian Criminal Code referred to in the legal opinion was dated 1968,

whereas the charge, as drafted, referred to 1969. The panel therefore invited the NMC to seek further legal advice which confirmed that the relevant Romanian Criminal Code was variously referred to as 1968 and 1969, but was in fact the same version.

The panel heard an application made by Ms Alabaster, on behalf of the NMC, to amend the wording of charge 1.

The proposed amendment was to include both of the years 1968 and 1969 in the charge, as there had been expert advice that both dates could be used to refer to the same version of the Romanian Criminal Code. It was submitted by Ms Alabaster that the proposed amendment would provide greater clarity and accuracy to the charge.

“That you, a registered nurse:

On 5 May 2017 at the Bucharest Court were convicted of

1. Bribe-giving

Contrary to article 255(1) of the Criminal Code (~~1969~~) (1968) (also referred to as (1969)) pursuant to article 5(1) of the Criminal Code.

AND in light of the above, your fitness to practise is impaired by reason of your conviction.”

You did not oppose this application.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’, as amended (“the Rules”).

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice

would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Decision and reasons on facts

At the outset of the hearing, you told the panel that you made full admissions to the charge.

The panel therefore finds charge 1 proved, by way of your admissions.

Background

The charge concerns a conviction in 2017 for an offence of bribery which was committed in 2013 whilst you were training to be a nurse in Romania.

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, your fitness to practise is currently impaired by reason of your conviction. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

Submissions on impairment

In her written submissions, Ms Alabaster addressed the issue of impairment and invited the panel to have regard to both protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference

to the cases of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin).

Ms Alabaster submitted:

“In this case the Panel has taken steps to ensure that the bringing of this matter, as an ‘impairment by virtue of a conviction’ case, contrary to article 22 (1) (a) (iii) was a permissible and fair way to proceed. Expert legal opinion was sought by the Panel, and delivered by the NMC, which confirmed that the matter for which the Registrant was convicted in Romania would constitute equivalent criminal conduct in the UK, where the Registrant has chosen to practise. The Panel accepted that expert legal opinion and the case has proceeded to the second stage.

The Registrant is convicted of the offence as pleaded in the Charge. She disputes the Facts to this Panel but agreed in evidence that she had the opportunity to assert her case in the Romanian Court of first instance, and then latterly to the Appeal Court. The conviction stands, following that due process, and as a result the NMC submits that the Registrant’s assertions of innocence have been rejected.

The Panel has been provided with a copy of the case of Joseph Achina v General Pharmaceutical Council [2021] EWHC 415 (Admin), where the Court examined the issue of a Registrant who faced an allegation of impaired fitness to practise by virtue of a conviction, the facts behind which he did not accept. The Panel’s attention is drawn in particular to paragraph 81-84. Paragraph 84 states;

‘In framing those words, the legislature is, I find, treating as conclusive, not only the “bare” facts to be found in the Certificate of Conviction, but also the broader factual matrix on which the convicted person has been sentenced. One finds that factual matrix in the sentencing remarks of the judge.’

This Panel has the Sentencing Remarks of the Judge in this case and it is on that basis that they are entitled to, and should, proceed to an examination of whether those facts which underlie the Conviction are currently impairing the Registrant's fitness to practise, despite her assertion that she has been unfairly convicted. They should not go behind the Facts of the conviction."

Ms Alabaster submitted that the Registrant had committed a serious criminal offence which was directly related to the academic stage of training to be a nurse. A court in Romania convicted her of the offence and deemed it so serious that a sentence of imprisonment for 1 year was an appropriate punishment, albeit that it had been suspended for 3 years. She also explained that the public expect and place confidence in the NMC to uphold professional standards of those on the register and that a member of the public hearing about your conduct may be concerned or fearful that a registered nurse with a conviction for bribery in relation to their nursing examinations may not have all the skills a registered nurse requires, which would harm public confidence in the profession.

You told the panel that you have been a fully qualified nurse since 2014, and moved to the UK with your family in 2016. You informed the panel that you started your career here as a health care assistant before you got a job as a registered nurse in 2017. You told the panel that you qualified as a nurse in Romania.

You explained to the panel that, with other members of your class, you provided money to be put towards a celebration following the exams and to pay your examination fee, and that those who denied the offence of bribery were prosecuted. Although you denied the offence at trial and appealed against the conviction you accept the verdict of the court and therefore admit the charge that the NMC have brought in this case.

You told the panel that you are currently working as a registered nurse at a care home, where you are employed for 36 hours a week. You submitted that you have been working well at the care home, and have not received any complaints regarding your practice. You said the panel that you left Romania to get away from what you described as a bribery

culture. You told the panel that it is a normal occurrence in Romania for people to bribe nurses for better care, and you did not like this as you just want to help people. You told the panel that you understand the importance of nurses not cheating to pass their exam and that you understand it is important for nurses to be trusted by their patients and the public. You told the panel that you would never lie whilst working as a registered nurse, as you are responsible for helping people and you always put the patients first.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: Roylance v General Medical Council (No 2) [2000] 1 A.C. 311, Nandi v General Medical Council [2004] EWHC 2317 (Admin), and General Medical Council v Meadow [2007] QB 462 (Admin).

Decision and reasons on impairment

The panel was of the view that by receiving a criminal conviction of this nature you have fallen significantly short of the standards expected of a registered nurse, and that your actions amounted to breaches of the Code. Specifically:

“You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public. 20 Uphold the reputation of your profession at all times. To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code.

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment.

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people

20.4 keep to the laws of the country in which you are practising”

The panel next went on to decide if as a result of the conviction, your fitness to practise is currently impaired.

The panel noted the case law which had been highlighted by Ms Alabaster and also noted that these cases concerned convictions in the UK rather than convictions overseas. Ms Alabaster accepted that the Romanian sentencing document which was before the panel did not provide conclusive proof of the facts underlying the conviction. The document was persuasive evidence of the facts it set out, but the panel was satisfied that it was right that it should also take into account the evidence you gave under affirmation about the relevant events.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of Grant in reaching its decision. In paragraph 74, she said:

‘In determining whether a practitioner’s fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be

undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found that there has been no evidence provided by the NMC that patients were put at a risk of harm by you. The panel noted that the NMC presented no information that your current nursing qualification is in any way invalid because of the events that resulted in your conviction, and Ms Alabaster specifically told the panel that any questions regarding the validity of your registration would have been dealt with by a different process. As there has apparently been no such process and there is no evidence that you managed to obtain an incorrect grade or in any other way obtained a benefit which resulted from the inappropriate payment that you had made, the panel had no reason to

conclude that you were not a competent practitioner and was of the view that you do not pose a risk to patients under your care. Therefore, the panel was satisfied that a finding of current impairment was not required on the grounds of public protection.

Furthermore, before the panel had finalised its decision on impairment, a new fact was agreed between the parties and was put to the panel. Confirmation had been received from Fundeni Sanitary Postgraduate School that the diploma you had been awarded in Romania remained valid. This was supportive of the evidence you had provided to the panel under affirmation that your nursing training school had taken no action as a result of your conviction.

Regarding insight, the panel considered that even though you denied the charge at court, you have shown a degree of insight into the impact of the findings made against you. In your evidence, you told the panel that you understand the significance of the charge, and told the panel that you would not lie and you always put the patients first. The panel was of the view that this shows that you have insight into the implications of the charge and that you understand the seriousness of your conviction.

In its consideration of whether you have remedied the impact of your conviction, the panel took into account your oral evidence. It noted that you said you moved away from Romania to get away from the “*bribery culture*” and that you understand the seriousness of your conviction, and how it has impacted on the reputation of the nursing profession. In addition to this, the panel noted that you have completed your sentence of a one year suspended sentence and three years’ probation, without any further concerns being raised. The panel was of the view that your actions are remediable, as although dishonesty is always serious, your conviction involving dishonesty was a single incident in very specific circumstances and can be seen as being towards the lower end of the spectrum.

The panel is of the view that there is a very low risk of repetition in this case. The panel was of the view that the evidence before it indicates that this was an isolated incident and

that no comparable situation is likely to arise in the future. It concluded that you are very unlikely to repeat actions of the sort which led to your conviction.

The panel was, however, of the view that confidence in the nursing profession would be undermined if there is no finding of impairment in this case. Bribery is an offence of dishonesty, which is generally considered to be a serious matter, although the panel accepted that this was a case which involved a relatively small amount of money (approximately £85) and was a single incident which had occurred in the particular circumstances of Romania in 2013. The panel noted, however, that the incident did relate to an examination that formed part of your professional qualification and this led it to conclude that a finding of impairment was necessary in the wider public interest of maintaining confidence in a properly regulated profession.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a caution order for a period of three years. The effect of this order is that your name on the NMC register will show that you are subject to a caution order and anyone who enquires about your registration will be informed of this order.

Submissions on sanction

Ms Alabaster submitted that the panel found that your fitness to practise as a registered nurse is currently impaired on the sole ground of it being in the public interest. She submitted that the panel should act with the NMC's overarching objective in mind, and take whatever steps it feels is necessary to put right the concerns identified.

Ms Alabaster submitted that the panel should take steps to uphold public confidence in the nursing profession and in the NMC as regulator. She submitted that this is a conviction case involving a sentence that was passed in a criminal court, but this is not necessarily reflective of how serious the matter is in a regulatory context.

Ms Alabaster submitted that a Romanian and English and Welsh legal expert gave advice at the last stage where she supported what you had said about corruption and bribe-giving being more common and wide-spread in Romania than it would be here.

Ms Alabaster invited the panel to have regard to the aggravating and mitigating factors which, in the NMC's view, were present in this case. She also invited the panel to take account of any contextual factors which may have given rise to mitigation.

Ms Alabaster referred the panel to the NMC Sanctions Guidance ("SG"), as well as the NMC's guidance on dishonesty and criminal convictions. She took the panel through the sanctions available to it in turn.

Ms Alabaster submitted that it is the NMC's position that a suspension order is the appropriate sanction to impose in the particular circumstances of this case. However, the question of what sanction to impose is always a matter for the panel's own professional judgment.

Ms Alabaster submitted that as the panel has found there to be an outstanding public interest concern, neither no further action nor a caution order are appropriate sanctions in

the particular circumstances of this case. Ms Alabaster submitted that the panel should take action to secure the public's trust in registered nurses, and to promote and maintain proper professional standards and conduct.

Ms Alabaster submitted that whilst there are no public protection concerns identified by the panel, the NMC does consider there to have been a criminal conviction relating to an offence of dishonesty that goes to the point at which you obtained your nursing qualifications. In these circumstances, Ms Alabaster submitted that neither no further action nor a caution order achieves the objective of maintaining proper professional standards and conduct, and these sanctions do not uphold confidence in the nursing profession or NMC as its regulator.

Furthermore, Ms Alabaster submitted that a conditions of practice order is not a suitable sanction in this case. She submitted that there are no identifiable areas of retraining for you to embark on, and there is nothing to suggest that your clinical nursing practice would benefit from targeted or focused remediation.

Ms Alabaster submitted that the panel has the power to impose a suspension order of up to 12 months. She submitted that a suspension order is necessary to address the seriousness of your conviction.

Ms Alabaster submitted that whilst there was no direct patient harm involved in this case, there are other factors present which makes your dishonesty more serious. She submitted that your dishonest conduct was pre-meditated, systematic and long-standing. Ms Alabaster submitted that it cannot be said that this was opportunistic or spontaneous conduct, or that there was no personal gain involved.

Ms Alabaster submitted that whilst your actions are not fundamentally incompatible with ongoing nursing registration, they require temporary removal from the NMC register. She submitted that this was a single instance of conduct and there is no evidence of any harmful or deep-seated attitudinal concerns.

Ms Alabaster submitted that the length of the suspension order can be determined by the panel in deciding where this case falls on the spectrum of seriousness. She submitted that the length of the suspension order can be reduced, taking account of any mitigating circumstances that the panel has found.

Ms Alabaster concluded by saying that it may not be necessary for a review to be held upon expiry of the sanction the panel given that there is only a finding of current impairment on the ground of public interest.

You submitted that, in your view, a suspension order would be too harsh a sanction to impose in this case.

You reminded the panel that you have been working as a registered nurse in a care home environment since July 2018. You submitted that being a registered nurse is about being caring and compassionate, and there is nothing to suggest that you do not take good care of your patients.

You stated that you have insight into your conviction, and your nursing practice has never been brought into question in the UK or Romania, as shown by the reference provided by your current line manager.

Decision and reasons on sanction

The panel heard and accepted the advice of the legal assessor.

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the

SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel did not consider there to be any aggravating factors involved in this case.

However, in respect of mitigating factors, the panel has considered the following as relevant:

- You have shown insight into the impact of your conviction.
- You have demonstrated safe and effective nursing practice, which is attested to positively by your line manager.

The panel noted that you have engaged with the NMC and have participated throughout these lengthy and protracted proceedings, despite periods of ill-health.

The panel first considered whether to take no further action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be inconsistent with the panel's earlier findings at the impairment stage of these proceedings to take no further action. The panel found you to have a conviction for a dishonesty related offence which was linked to you obtaining your nursing qualifications in Romania. It determined that it would not be appropriate or proportionate to take no further action having regard to the public interest.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'*

Whilst the panel noted that dishonesty concerns are always serious, the panel was of the view the dishonest conduct must also be contextualised and put into perspective. The panel did not agree with Ms Alabaster's submission that your dishonesty was pre-

meditated or long-standing. It was of the view that the NMC had based its case on the sentencing remarks of the judge alone, without giving due consideration to the wider contextual issues which your evidence and the observations of the legal expert had brought out.

The panel considered that the Romanian authorities were taking steps to change the prevalent culture and that it was in this context that your prosecution had occurred. However, your nursing qualification remains valid and has not been revoked. The panel accepted your evidence that you had approached your nursing training school after your conviction and had been told that there had been no impact on your qualification and that you did not need to take any further action. There is no evidence to show that you obtained a higher grade than what you would otherwise have done as a result of making the payment. The panel noted that the expert legal evidence included the observation that *“there was at the time in Romania an all-pervasive culture of functionaries in positions of power requesting bribes from the public in order to perform their duties”*. The panel further noted that the offence for which you were convicted took place more than eight years ago; it had no evidence before it of any repetition of any dishonesty. The panel was also satisfied that there was a low risk of you acting in a similar way if faced with any comparable circumstances in future.

The panel found you to have demonstrated sufficient insight into your conviction and determined that there are no outstanding public protection concerns.

The panel noted that you have made good progress in terms of developing your nursing skills and furthering your nursing career. You have worked as a registered nurse in a care home environment since 2018. It had regard to the positive reference received from your line manager, who states:

“I can confirm that Mrs Margareta Mircea was employed at Lydfords Care home as Registered nurse working 42 hours per week on nights in July 2018. During her employment Margareta was a very reliable staff member, very kind, compassionate

and always willing to learn and develop and provide the best possible care to the residents. Her work performance was very good with no concerns raised during her employment...

I can confirm that I was Mrs Mircea general manager during her employment at Lydfords care home and Wadhurst Manor and her work is totally satisfactory and with no concerns over her practice and capabilities..."[sic].

However, the panel had determined that the public interest did require your conduct to be marked to send a clear message to the nursing profession that your actions fell below the standards expected of a registered nurse.

Therefore, whilst the panel considered your conviction to be a serious matter, in taking account of all the above, it was sufficiently satisfied that it could be appropriately addressed, with the public interest elements served, by the imposition of a caution order.

Having considered the general principles, and looking at the totality of the findings on the evidence, the panel has determined to impose a caution order for a period of **three years**. It determined that this would be the appropriate and proportionate response to your conviction in this case. This outcome would mark not only the importance of maintaining public confidence in the nursing profession, but also send the public and the nursing profession a clear message about the standards required of a registered nurse. For the next three years, any prospective employer will be on notice that your fitness to practise has been found to be impaired and that you are subject to a caution order.

The panel considered whether placing a conditions of practice order on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel was of the view that a conditions of practice order would not be an appropriate or measurable response in this case as there are no outstanding issues around patient safety. It was aware that the

concerns identified solely relate to your conduct and behaviour, as there are no identifiable areas of clinical nursing practice in need of re-training.

The panel considered the imposition of a suspension order, but determined that this outcome would be disproportionate in the particular circumstances of this case. It was satisfied that a suspension order would not serve any useful purpose. You have demonstrated insight into your conviction and the panel had received clear evidence that your behaviour needed to be considered in the particular circumstances of Romania in 2013. There is no suggestion that you would not have obtained your nursing qualification without this bribe, and there is nothing to suggest that your clinical practice has fallen below the required standards. To the contrary, your line manager sees you as an asset to the nursing profession.

Having regard to all the circumstances involved, the panel was satisfied that a fully informed member of the public would consider this outcome to be fair and appropriate, and that therefore it is sufficient to satisfy the public interest considerations of this case. Furthermore, the panel determined that it would not be in the public interest to prevent an otherwise competent registered nurse from continuing unrestricted practice and utilising skills for the benefit of patients.

The panel has decided that a caution order would adequately serve the public interest elements of this case.

At the end of this period, the note on your entry in the NMC register will be removed. However, the NMC will keep a record of the panel's finding that your fitness to practise had been found impaired. If the NMC receives a further allegation that your fitness to practice is impaired, the record of this panel's finding and decision will be made available to any practice committee that considers any further allegation.

This decision will be confirmed to you in writing.

That concludes this determination.